

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

FILED

FEB 17 2005

U.S. DISTRICT COURT
CHARLESTON, WV 26301

UNITED STATES OF AMERICA,
Plaintiff,

v.

Criminal No. 1:05CR4

DANIEL WILSON TESTERMAN
Defendant.

**GOVERNMENT'S SECOND MOTION FOR EXTENSION OF TIME
AND MOTION TO CONTINUE**

Now comes the United States of America, and Thomas E. Johnston, United States Attorney for the Northern District of West Virginia, by Sherry L. Muncy, Assistant United States Attorney, and moves the Court to extend the time to respond to the defendant's motion to suppress and to request a continuance of the motions hearing. In support of these requests, the governments states the following;

- 1.) The defendant has filed a motion to continue both the pre-trial and the trial of this matter due to scheduling conflicts. The defendant has waived his right to speedy trial. The government has responded that it does not object to either of these two motions.
- 2.) The original scheduling order scheduled a deadline for the government's response to any motions of the defendant on February 17, 2005; and further scheduled any hearing thereon for Wednesday, February 23, 2005 before the Magistrate Judge. The government moved to extend the deadline and continue the hearing and those requests were granted.
- 3.) The motion to suppress timely filed by the defendant on February 7, 2005, will certainly require testimony. The government is pursuing this case based on a state search warrant obtained by Deputy Michael Kelley of the Ritchie County Sheriff's Office. The government's response to this motion is currently due on February 22, 2005 with the motions hearing scheduled

for February 28, 2005. On February 17, 2005, the government learned that Deputy Kelley's predicted minor heart surgery on February 11 had unfortunately escalated to triple by-pass surgery and he is currently hospitalized. At this time it is unknown when he will be available, but the government would predict at least one month.

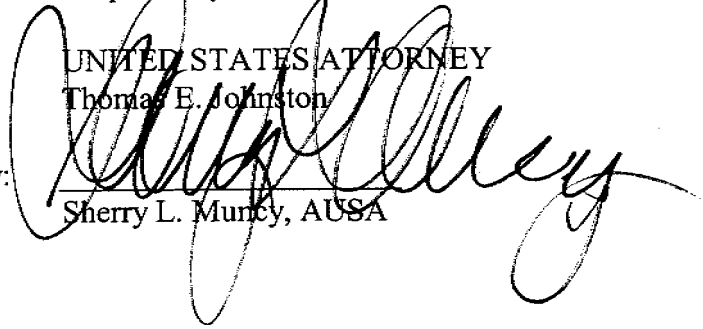
4.) The United States needs the assistance and attendance of Deputy Kelley to adequately prepare for the motion to suppress. .

WHEREFORE, the government moves the Court to extend the government's deadline to respond to the motion, and to continue the motion hearing date.

Respectfully submitted,

UNITED STATES ATTORNEY
Thomas E. Johnston

By:


Sherry L. Muncy, AUSA

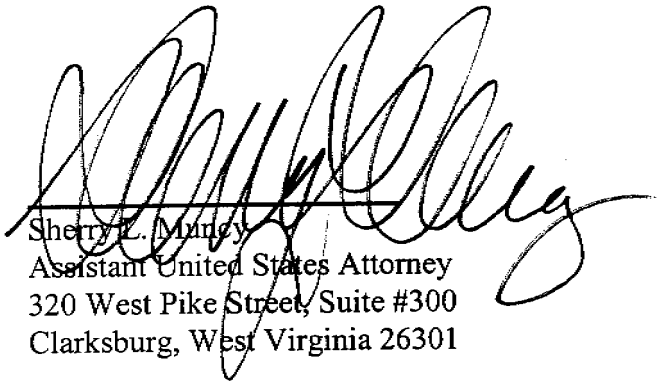
CERTIFICATE OF SERVICE

I, Sherry L. Muncy, Assistant United States Attorney for the Northern District of West Virginia, do hereby certify that a copy of the foregoing GOVERNMENT'S MOTION FOR EXTENSION OF TIME AND MOTION TO CONTINUE was served upon counsel for the defendant, Daniel Wilson Testerman, by first class mail addressed to:

George J. Cosenza
Cosenza & Merriman, PLLC
515 Market Street
P. O. Box 4
Parkersburg, WV 26102.

Dated:

Feb. 17, 2005


Sherry L. Muncy
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